Supreme Court, U.S.
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No. 89-1684

In the
Supreme Court of the United States

October Term, 1989

LYNDA KRUSO, et al.,
Petitioners,

v.

ITT CORPORATION, et al.,
Respondents.

ON A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITIONERS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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AS RESPONDENT'S BRIEF SUGGESTS, DUE PROCESS REQUIRES THAT PLAINTIFFS IN CIVIL CASES BE GIVEN CONSIDERATION ON REMOVAL SIMILAR TO THAT ALREADY GIVEN TO STATE PROSECUTORIAL AGENCIES.

Respondent misread the removal statute (specifically 28 U.S.C. section 1446(c)) in its brief (Respondent's Brief at 7), but did so usefully.

Respondent plausibly assumed that the language of section 1446(c)(4) and (5) applies to all removals. If it did, Petitioner here would have nothing to object to, for those subsections provide that a petition for removal is to be summarily dismissed if it appears on its face that it should not be granted (subsection (4)), and that, if it the petition is not dismissed, it should be set for an evidentiary hearing immediately (subsection 5)).

The problem is that subsection 1446(c) does not apply to all removals, it applies only to the removal of criminal cases.

But Respondent's interpretation of subsection 1446(c) as applicable here suggests that similar protection for civil plaintiffs is not entirely inconceivable. Indeed, even if hearings were not ordered in every case, it would go a long way to ensuring plaintiffs due process if the court were at least required to examine removal notices or petitions in civil cases, and plaintiffs were allowed to object to them, before they were granted.

It is Respondent, not Petitioners, who "misstate the law (Respondent's Brief at 10)." Now that Respondent has been informed that filing notice of removal does "totally oust state jurisdiction without even the most cursory review of the petition to determine whether the requirements for removal have been met (Peti-

tion, p. 10)," Respondent may wish to reconsider its assertion that the Petition is without merit.

CONCLUSION

For the reasons stated above and in the Petition, the writ should be granted.

Respectfully submitted,

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LYNDA KRUSO, et al.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am a citizen of the United States and a resident of the county aforesaid; I am employed in the office of a member of the bar of this Court at whose discretion the following service was made. I am over the age of 18 years and not a party to the within action. My business address is 1717 - 4th Street, Third Floor, Santa Monica, California 90401.

On June 9, 1990, I served the foregoing document described as PETITIONERS' REPLY TO RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF CERTIORARI on the parties interested in this action by enclosing true copies thereof in sealed envelopes, addressed as follows, with postage thereon fully prepaid, and by depositing them in the United States Mail at Santa Monica, California:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed this Ninth day of June, 1990, at Santa Monica, California.

Linda Marie Baldridge